

# **DECLARATION OF EMERGENCY**

## **Office of Financial Institutions**

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### **Louisiana Community Development Financial Institution Program (LAC 10:XV.1701-1712)**

The Office of Financial Institutions, pursuant to the emergency provision of the Administrative Procedure Act, R.S. 49:953.(B), adopts the following Emergency Rules of the Louisiana Community Development Financial Institutions Act as authorized by R.S. 51:3083. This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective **October 1, 2005**, and shall remain in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Office of Financial Institutions has found an immediate need to provide direction to Louisiana community development financial institutions who are seeking to participate in the Louisiana Community Development Financial Institution Act, which became effective July 12, 2005. Without these Emergency Rules the public welfare may be harmed as a result of the inability of Louisiana community development financial institutions to raise capital, to then invest in Louisiana entrepreneurial businesses operating in low income communities that are in need of capital for survival, expansion, new product development, or similar business purposes. The failure to adopt these rules may impede economic development in Louisiana.

#### **Title 10**

#### **FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC**

#### **Part XV. Other Regulated Entities**

#### **Chapter 17. Louisiana Community Development Financial Institution Program**

#### **§1701. Description of Program**

A. These rules implement the Louisiana Community Development Financial Institution (LCDFI) Program pursuant to R.S. 51:3075 et seq. This program was created by Act 491 of the 2005 Louisiana Legislature to further community development, diminish poverty, provide assistance in the formation and expansion of businesses in economically distressed areas, which create jobs in the state by providing for the availability of venture capital financing to entrepreneurs, managers, inventors, and other individuals for the development and operation of Louisiana entrepreneurial businesses.

## §1702. Definitions

The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

*Affiliate and/or Affiliated Company -*

a. the term *affiliate* is defined as follows:

i. when used with respect to a specified person or legal entity, *affiliate* means a person or legal entity controlling, controlled by or under common control with, another person or legal entity, directly or indirectly through one or more intermediaries;

ii. when used with respect to a Louisiana entrepreneurial business, *affiliate* means a legal entity that directly, or indirectly, through one or more intermediaries, *controls*, is *controlled* by, or is under common control with, a Louisiana entrepreneurial business;

*Applicant* - a Louisiana corporation organized under an incorporating statute which applies to the commissioner for certification as a LCDFI.

*Application* - a completed application as determined by the commissioner.

*Associate of a LCDFI -*

a. any of the following:

i. a person serving a LCDFI, or an entity that directly or indirectly controls a LCDFI, as any of the following: officer, director (including advisory, regional directors and directors emeritus), employee (provided such employee has significant management and policy responsibilities and powers, or is highly compensated in comparison with the other employees), agent, investment or other advisor, manager (in the case of a manager-managed limited liability company), managing member (in the case of a member-managed limited liability company), external accountant, or outside general/special counsel;

ii. a person directly or indirectly owning, controlling or holding with the power to vote 10 percent or more of the outstanding voting securities or other ownership interests of the LCDFI;

iii. a current or former spouse, parent, child, sibling, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of any person described in §1702. *Associate of a LCDFI*.a.i or ii;

iv. a person individually or collectively controlled by or under common control, directly or indirectly, with any person described in §1702. *Associate of a LCDFI*.a.i, ii or iii;

v. a person that invests in the LCDFI and has received an income tax credit reduction under the LCDFI Act;

vi. an affiliate of any person described in §1702. *Associate of a LCDFI*.a.v; or

vii. (a). a person that, within six months before or at any time after the date that a LCDFI invests in the person, is controlled by a LCDFI or any of its affiliates.

(b) However, even though a LCDFI may not intend to control a business in which it invests, it may obtain short-term (less than one year) control over the Louisiana entrepreneurial business after its initial investment if such control is acquired as a means of protecting the LCDFI's investment resulting from a material breach of any financing agreement. Such control will not create an associate relationship under §1702. *Associate of a LCDFI*.a.vii.(a).

b. For the purposes of this definition, if any associate relationship described in §1702. *Associate of a LCDFI*.a.i-vi exists between a person and the LCDFI at any time within six months before or at any time after the date that the LCDFI makes its initial investment in such person, that associate relationship is considered to exist on the date of the investment.

*Business Plan* - a written narrative providing a general description of the proposed Louisiana community development financial institution ("LCDFI") which should include, at a minimum, a description of the LCDFI's organizational structure; its location; the types of lending and financing it intends to offer and to whom; whether it intends to provide management assistance and if so, to what extent and to whom; and whether the LCDFI will operate as a profit or nonprofit corporation.

*Capitalization* - for purposes of initial certification, pursuant to R.S. 51:3080(B):

a. *Generally Accepted Accounting Principles (GAAP) Capital* - common stock, preferred stock, general partnership interests, limited partnership interests, surplus and any other equivalent ownership interest, all of which shall be exchanged for cash; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; less all organization costs;

b. LESS: the following, when any preferred or common stock, partnership interests, or other equivalent ownership interests are subject to redemption or repurchase by the LCDFI: preferred stock, common stock, partnership interests, limited partnership interests, and other equivalent ownership interests shall be multiplied by the following percentage reductions and deducted from capital:

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

c. Notwithstanding the foregoing, there will be no reduction for a withdrawal of capital within five years after certification, provided the withdrawal is contemplated by all governing documents and disclosed to all prospective investors and any such withdrawal is concurrently replaced by an equal amount of cash GAAP capital. Moreover, the amount contemplated to be withdrawn shall not be the basis for any income tax credit reduction.

*Change of Control* - for purposes of R.S. 51:3081(F) shall mean:

- a. a change in beneficial ownership of 50 percent or more of the outstanding voting shares of the LCDFI; or
- b. individuals who constitute the voting power of the Board of Directors, Board of Managers or other governing board of the LCDFI as of the later of the LCDFI's certification date or the date of the LCDFI's last notification under R.S. 51:3081(F) cease to comprise more than 50 percent of the voting power of such Board of Directors, Board of Managers, or other board; or
- c. a change in the general partner or manager of the LCDFI or a *change of control* with respect to such general partner or manager; or
- d. any merger or consolidation if a *change of control* has occurred based upon the surviving entity being considered to be a continuation of the LCDFI that was the party to the merger or consolidation transaction.

*Control* -

- a. Solely for purposes of determining whether a Louisiana entrepreneurial business *controls*, is *controlled* by, or is under common *control* with another person, or if a person is an associate of a LCDFI, *control* means:
  - i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or
  - ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote, 50 percent or more of the then outstanding voting securities issued by a legal entity, when such control is exercised with respect to a specified person or legal entity.
- b. For all other purposes, *control* means:
  - i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or
  - ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote 25 percent or more of the then outstanding voting securities issued by a legal entity.

*Date on Which an Investment Pool Transaction Closes* - date that a LCDFI designates, and notifies the commissioner of such designated date, that it has received an investment of certified capital in an investment pool. For purposes of this definition, an investment pool transaction may not close prior to:

- a. execution of all required documents and elimination of all material contingencies associated with the consummation of the transaction; and

b. the date that the LCDFI receives a cash investment of certified capital that is available for investment in Louisiana entrepreneurial businesses.

*Employees -*

a. Full-time and part-time employees and officers, converted to a full-time equivalent basis.

b. The term *employees* shall not include:

i. attorneys, accountants or advisors providing consulting or professional services to a Louisiana entrepreneurial business on a contract basis; or

ii. employees of any business that perform services (contractor) for a Louisiana entrepreneurial business.

For example: a contractor may enter into an agreement to perform services for a Louisiana entrepreneurial business. The contractor's employees that perform services under that agreement would not be employees under this definition.

*Equity Features -* includes [pursuant to R.S. 51:3078(5)(b)] the following:

a. *Royalty Right* - rights to receive a percent of gross or net revenues, either fixed or variable, whether providing for a minimum or maximum dollar amount per year or in total, for an indefinite or fixed period of time, and may be based upon revenues in excess of a base amount.

b. *Net Profit Interests* - rights to receive a percent of operating or net profits, either fixed or variable, whether providing for a minimum or maximum dollar amount per year or in total, for an indefinite or fixed period of time, and may be based upon operating or net profits in excess of a base amount.

c. *Warrants for Future Ownership* - options on the stock of the Louisiana entrepreneurial business. The Louisiana entrepreneurial business may repurchase a warrant (a "call") or the Louisiana entrepreneurial business may be required to sell a warrant (a "put") at some stated amount or an amount based on a pre-agreed upon formula.

d. *Equity Sale Participation Right* - conversion options of debt, to convert all or a portion of the debt to the corporate stock of the Louisiana entrepreneurial business, then to participate in the sale of the stock of the Louisiana entrepreneurial business.

e. *Equity Rights* - the receipt or creation of a significant equity interest in a Louisiana entrepreneurial business.

f. And such other conceptually similar rights and elements as the OFI may approve.

*Financing Assistance Provided in Cash and The Investment of Cash* - transaction, which in substance and in form, results in a disbursement of cash.

Examples of transactions excluded from this definition are: circular transactions as determined by the commissioner; capitalization of accrued principal, interest, royalty or other income; letters of credit; loan guarantees; prepaid debt; loan collection expenses or legal fees incurred by a LCDFI in protecting its collateral interest in an investment.

*Institution Affiliated Party* - a director, officer, employee, agent, controlling person, and other person participating in the affairs of the LCDFI.

*Investment* -

a. at all times, in order to perfect the tax credits earned as a result of an investment described in R.S. 51:3078(3) and (9), or R.S. 51:3079(A) and (B), the LCDFI shall have at least 50 percent of the certified capital of each investment pool that is received in cash:

(i). available to be invested in *qualified investments*;

(ii). invested in *qualified investments* made subsequent to the *date on which the investment pool transaction closes*; or

(iii). a combination of §1702.*Investment.a(i)* and (ii).

b. i. an *Investment* furthers economic development within Louisiana if the proceeds from an investment are used in a manner consistent with representations contained in the affidavit required to be obtained from the Louisiana entrepreneurial business prior to an investment in the business and the documented use of such proceeds promote Louisiana economic development. Proceeds shall be determined to promote Louisiana economic development if more than 90 percent of the proceeds derived from the investment are used by the Louisiana entrepreneurial business for two or more of the following purposes:

(a). to hire significantly more Louisiana employees;

(b). to directly purchase or lease furniture, fixtures, land or equipment that will be used in the Louisiana operations of the business or to construct or expand production or operating facilities located in Louisiana. This does not include the purchase of these assets as part of a company buyout;

(c). to purchase inventory for resale from Louisiana-based operations or outlets;

(d). to capitalize a business in order for the business to secure future debt financing to support the Louisiana operations of the business. Such future debt financing must be obtained within three months of the *qualified investment* date;

(e). to increase or preserve working capital and/or cash flows for Louisiana operations of the business. However, except as allowed in Subclause (d) above, this does not include those *investments* whereby the proceeds of the *investment* will be utilized to refinance existing debt of the business;

(f). to preserve or expand Louisiana corporate headquarters operations. *Preserve* means a company that is in danger of failing or contemplating a move out-of-state;

(g). to support research and development or technological development within Louisiana;

(h). to fund start-up businesses that will operate primarily in Louisiana; or

(i). to provide for an additional economic benefit not otherwise described above. However, before this purpose may be used as a basis for a determination that the *investment* furthers economic development within Louisiana, the LCDFI shall request in writing and the commissioner shall issue a written response to the LCDFI that, based upon relevant facts and circumstances, the proposed *investment* will further Louisiana economic purposes and result in a significant net benefit to the state. The commissioner's letter opinion shall be issued within 30 days of the request by the LCDFI, and shall be part of the annual review required to be performed by the office and billed according to provisions contained in §1710.A.1. However, upon written notification to the LCDFI, the 30-day review period can be extended by the commissioner if he determines that the initial information submitted is insufficient or incomplete for such determination;

ii. an *investment* by a LCDFI in an interim construction project shall not be considered to further economic development within Louisiana unless the same LCDFI also provides the permanent financing.

*Net Income* - net income as defined under or consistent with Generally Accepted Accounting Principles.

*Net Worth* - net worth as defined under or consistent with Generally Accepted Accounting Principles.

*Office* - the Louisiana Office of Financial Institutions (OFI).

*Participation Between LCDFIs* - are loans or other investments in which one or more LCDFIs have an ownership interest. If a loan or investment is determined to meet the definition of a qualified investment, a LCDFI may only include its participation (ownership interest) as a qualified investment.

*Permissible Investments* - for purposes of R.S. 51:3081(G), cash deposited with a federally-insured financial institution; certificates of deposit in federally insured financial institutions; investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States; investment-grade instruments (rated in the top four rating categories by a nationally recognized rating organization); obligations of any state, municipality or of any political subdivision thereof; money market mutual funds or mutual funds that only invest in *permissible investments* of a kind and maturity permitted by this definition; or any other *investments* approved in advance and in writing by the commissioner. All *permissible investments* which are included in the calculation under Subsection a.(i) of the definition of *Investment* in LAC 10:XV.102 shall have a maturity of two years or less or the terms of the investment instrument shall provide that the principal is

repayable to the LCDFI within 10 days following demand by the LCDFI in connection with funding a qualified investment.

*Person* - a natural person or legal entity qualified to seek certification as a LCDFI.

*Sophisticated Investor* - any of the following:

a. an institutional investor such as a bank, savings and loan association or other depository institution insured by the Federal Deposit Insurance Corporation, registered investment company or insurance company;

b. a corporation with total assets in excess of \$5,000,000;

c. a natural person whose individual net worth, or joint net worth with that person's spouse at the time of his purchase, exceeds \$1,000,000; or

d. a natural person with an individual taxable income in excess of \$200,000 in each of two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

*Total Certified Capital under Management* for purposes of investment limits, pursuant to R.S. 51:3081(G):

a. *GAAP Capital* - common stock, preferred stock, general partnership interests, limited partnership interests, surplus and other equivalent ownership interests, all of which shall be exchangeable for cash and which is available for investment in qualified investments; undivided profits or losses which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; reduced by all organization costs.

b. PLUS: Qualified Non-GAAP Capital: the portion of debentures, notes or any other quasi-equity/debt instruments with a maturity of not less than five years which is available for investment in qualified investments.

c. LESS: the following, when any GAAP capital or Qualified Non-GAAP capital is subject to redemption or repurchase by the LCDFI:

The GAAP Capital and Qualified Non-GAAP Capital subject to redemption or repurchase shall be multiplied by the following percentage reductions and deducted from capital:

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent



d. The portion of an investment that is guaranteed by the United States Small Business Administration or the United States Department of Agriculture's Business and Industry Guaranteed Loan Program shall be excluded from the amount of the investment when determining the investment limit pursuant to R.S. 51:3081(G).

### **§1703. Applications**

A. A company organized and existing under the laws of Louisiana, created for the purpose of making qualified investments, as required in R.S. 51:3075 et seq., shall make written application for certification to the commissioner on application forms provided by the office.

1. An application fee as prescribed by LAC 10:XV.1712 shall be submitted with the application. Checks should be payable to the Office of Financial Institutions.
2. This Office reserves the right to return the application to the applicant if the fee submitted is incorrect. The application may be resubmitted with the correct fee. The application will not be considered officially received and accepted until the appropriate fee is submitted. Application fees are nonrefundable.

B. The forms for applying to become a LCDFI may be obtained from the Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095, and shall be filed at the same address. The time and date of filing shall be recorded at the time of filing in the office and shall not be construed to be the date of mailing.


C. Applications and all submissions of additional information reported to the office shall be delivered via United States mail, or private or commercial interstate carrier, properly addressed and postmarked, and signed by a duly authorized officer, manager, member or partner and shall be made pursuant to procedures established by the commissioner.

D. The commissioner shall cause all applications to be reviewed by the office and designate those he determines to be complete. In the event that an application is deemed to be incomplete in any respect, the applicants will be notified within 30 days of receipt. A previously incomplete application may be resubmitted, either in a partial manner or totally, which will establish a new time and date received for that application.

E. The submission of any false or misleading information in the application documents will be grounds for rejection of the application and denial of further consideration, as well as decertification, if such information discovered at a subsequent date would have resulted in the denial of such license. Whoever knowingly submits a false or misleading statement to a LCDFI and/or the office may be subject to civil and/or criminal sanctions.

## **§1704. Certification Instructions and Guidelines**

A. The application shall contain the following specific information:

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1. name of applicant;
  2. date of application;
  3. address of applicant;
  4. Louisiana corporate certification number and certified copies of the articles of incorporation and initial report filed with the Louisiana Secretary of State;
  5. a federal tax identification number;
  6. phone number, address and zip code;
  7. a copy of any bylaws executed by the board of directors;
  8. the designation of a correspondent, agent or person responsible for responding to questions relating to the application;
  9. a resolution of the board of directors of the applicant corporation authorizing, empowering and directing an officer of the applicant corporation to apply for certification as a LCDFI, and to sign said application;
  10. current (less than one year) financial statements for all incorporators and initial directors;
  11. description of the LCDFI's business plan, in a narrative form, which shall include, at a minimum, the following:
    - a. a description of the LCDFI's statement of purpose and organization;
    - b. types of lending and financing it intends to offer and to whom;
    - c. whether it intends to provide management assistance, and if so, to what extent and to whom;
    - d. whether the LCDFI will be a profit or nonprofit corporation;
    - e. pro forma financial statements for the three consecutive years following the filing of the application, showing future earnings prospects;
    - f. a proposed net worth structure as required by R.S. 51:3080(B);
  12. a list of all of current directors, officers and controlling persons;
  13. biographical information concerning the proposed directors, officers and controlling persons, including personal information, résumé of each person's education, their employment record and prior associations or position with other LCDFI's and in what capacity in or out of Louisiana;
  14. Form granting the commissioner authority to obtain information from outside sources;
  15. evidence that the applicant entity has been certified as a Community Development Financial Institution by the United States Department of the Treasury; and
  16. other pertinent information as may be required by the commissioner in his sole discretion.

## **§1705. Conditions of Certification**

A. All LCDFIs, through an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, shall certify and acknowledge all of the following conditions for certification as a Louisiana Community Development Financial Institution and shall certify and acknowledge that the statement is true and correct:

1. The LCDFI has an initial capitalization of not less than \$500,000. If any capitalization is repurchased or contemplated to be repurchased by the LCDFI within five years after certification, the LCDFI will concurrently replace any repurchased capital with cash capital, as defined under Generally Accepted Accounting Principles. Any contemplated repurchases shall be disclosed in all governing documents to all prospective investors. The amount repurchased shall not be the basis for any income tax credits.

2. At least 30 days prior to the sale or redemption of stock, partnership interests, other equivalent ownership interests or debentures constituting 10 percent or more of the then outstanding shares, partnership interests, other equivalent ownership interests or debentures, the LCDFI will provide a written notification to the office. Information, as determined by the commissioner, shall be submitted with the notification.

3. The board of directors/shareholders will not elect new or replace existing board members or declare dividends without prior written consent of the office during the first two years following certification as a LCDFI.

4. The LCDFI will immediately notify the office in writing when its total certified capital under management is not sufficient to enable the LCDFI to operate as a viable going concern.

5. The LCDFI will not engage in any activity which represents a material difference from the business activity described in its application without first obtaining prior written approval by the office.

6. The LCDFI will comply with the LCDFI Act and all applicable rules, regulations and policies that are currently in effect or enacted after the date of certification.

7. The LCDFI will adopt and follow OFI's valuation guidelines and record retention policies.

8. Any other conditions deemed relevant by the commissioner.

B. 1. If a LCDFI contemplates any public or private securities offerings, prior to the certification of any tax benefits resulting from the certified capital raised through such offerings, the LCDFI shall have a securities attorney provide a written opinion that the company is in compliance with Louisiana securities laws, federal securities laws, and the securities laws of any other states where the offerings have closed. Copies of all offering materials to be used in investor solicitations must be submitted to the office at least 30 calendar days prior to investor solicitation.

2. If a LCDFI seeks to certify capital pursuant to R.S. 51:3078(6)(b), the LCDFI shall submit to the commissioner documentation showing the proposed structure in sufficient detail to allow the office to determine that the proposed structure complies with all applicable laws and regulations. This information shall be submitted to the commissioner no later than 30 calendar days prior to a request for certification of capital.

## **§1706. Requirements for Continuance of Certification and Decertification**

A. In calculating the percentage requirements for continued certification of an investment pool under Subsection A of R.S. 51:3081 and decertification of an investment pool under R.S. 51:3082:

1. The numerator for the investment pool shall be:
  - a. 100 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are held for a minimum of one year; and
  - b. 50 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are intended to be held less than one year.
2. For purposes of the calculation of the numerator:
  - a. no qualified investment may be counted more than once;
  - b. the date the investment of cash is made determines whether the one-year holding date is achieved. For multiple funding, each funding must be held for one year to receive 100 percent treatment. The calculation of the amount of time an investment is held will begin at the time of the investment of cash. Therefore, for multiple funding situations, only those cash investments that have been or are intended to be held for a minimum of one year are eligible for full credit as a qualified investment. All other advances will receive 50 percent credit.
3. The denominator shall be total certified capital of the investment pool.

B. Compliance with requirements for continuance of certification and voluntary or involuntary decertification (collectively referred to as compliance) of each investment pool will be determined on a first-in, first-out basis: a LCDFI's first investment pool will be evaluated for compliance before any succeeding pools. Only those qualified investments made after the investment date of each investment pool are considered in determining compliance for that particular investment pool. No qualified investments made prior to an investment pool's investment date may be used in determining that particular investment pool's compliance. However, if more than one investment pool operates simultaneously, a LCDFI may allocate its qualified investments to all open investment pools, provided such allocations are reasonable as determined by the commissioner.

C. 1. Upon voluntary decertification, any investments which received 100 percent treatment and were counted as part of A.1.a above may not be sold for a minimum of one year from the date of funding provided that this requirement shall not apply to:

- a. a sale that is executed in connection with a sale of control of a Louisiana entrepreneurial business; or
- b. the sale of any investment that is publicly traded.

2. At the time of voluntary decertification, the LCDFI may deliver to the Office a letter of credit in form and substance, and issued by a federally insured bank. The letter of credit:

- a. shall be payable to the Office as beneficiary;
- b. shall be in a face amount equal to the aggregate value of investments required to be held following voluntary decertification in accordance with C.1 above;
- c. shall provide that the letter of credit is forfeitable in full if the LCDFI fails to comply with the requirements of C.1 above; and
- d. may provide for reduction of the face amount of the letter of credit as the holding periods of the investments which are required to be held pursuant to C.1 above exceed one year, provided that the face amount of the letter of credit may never be less than the aggregate value of investments counted as part of A.1.a above which have not yet been held by the LCDFI a minimum of one year.

3. If the LCDFI provides a letter of credit in accordance with C.2 above, the forfeiture of the letter of credit shall constitute an assessment against the LCDFI as the sole remedy for the failure of the LCDFI to comply with the requirements of C.1 above; otherwise, the failure to comply with C.1 above shall be considered a violation of R.S. 51:3081(E)(3).

#### **§1707. Change of Control**

A. In the event of a change of control of a LCDFI, the LCDFI shall provide written notification to the commissioner of the proposed transaction at least 30 days prior to the proposed change of control effective date. Unless additional information is required, the commissioner shall review the information submitted and shall issue either an approval or denial of the change of control within 30 days of the receipt of the notification.

B. Information to be included in the notification shall include:

1. a completed biographical and financial statement on each new owner, provided that any transfer to a person or entity who was a shareholder as of the later of the certification date for the LCDFI or the date of the LCDFI's last notification under R.S. 51:3081(F) for whom the Office of Financial Institutions has received a current Biographical and Financial Report and conducted a current background check shall be disregarded;
2. a copy of the proposed business plan of the new owners covering a three year period;
3. a discussion of the previous experience the proposed owner has in the field of venture capital financing;
4. a credit report on each new owner;

5. a listing of any changes to the board of directors and/or of the LCDFI;
6. a copy of any legal documents or agreements relating to the transfer, if applicable.

### **§1708. Information Required from Louisiana Entrepreneurial Businesses**

Prior to making a qualified investment in a Louisiana entrepreneurial business, a LCDFI shall obtain, from an authorized representative of the business, a signed affidavit, the original of which shall be maintained by the LCDFI in its files. The affidavit shall contain all of the following:

1. full and conclusive legal proof of the representative's authority to act on behalf of the business.

For example: a board resolution or such other appropriate evidence of a grant of necessary authority;

2. a binding waiver of rights and consent agreement sufficient to allow the LCDFI, upon request to the business, full access to all information and documentation of the business which is in any way related to the LCDFI's investment in the business;

3. completed forms, certifications, powers of attorney, and any other documentation, as determined by the commissioner, sufficient to allow access by the LCDFI of any of the information and/or records of the business in the possession of any other business or entity, including but not limited to, financial institutions and state and federal governmental entities;

4. a statement certifying the intended use of the investment proceeds, and that the business will provide to the LCDFI documentation to support the use of proceeds;

5. a statement certifying that the business meets the qualifications of a "Louisiana Entrepreneurial Business" as defined by R.S. 51:2303(5); and

6. an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, certifying all of the above and foregoing as being true and correct.

### **§1709. General Provisions**

#### **A. Books and Records**

1. A LCDFI shall make and keep its records in conformity with Generally Accepted Accounting Principles.

2. A LCDFI shall make and keep all of its records at its main office as identified in its application for certification or at some other location authorized by prior written approval of the commissioner.

3. All books and records of a LCDFI shall be retained for a period of at least three years following decertification of the LCDFI in accordance with R.S. 51:3082.

#### **§1710. Directors and Officers**

A. Election of Directors or Managers. At least 30 days prior to the election of any person as the director or manager of a LCDFI, such LCDFI and such director or manager shall file with the commissioner a report containing the following information:

1. name, address and occupation of the proposed director or manager;
2. title of any office which the director or manager previously held with the LCDFI;
3. anticipated election date of the director or manager;
4. manner of election of the director or manager (that is, whether by the board or by the shareholders);
5. in case a director or manager is not an incumbent director or executive officer of the LCDFI, the LCDFI shall provide:
  - a. a personal financial statement and confidential résumé on a form prescribed by the commissioner, containing the information called for therein, as of a date within 90 days before the filing of the report and signed by the proposed director or manager;

B. Appointment of Executive Officers. At least 30 days prior to the appointment of any person as an executive officer of a LCDFI, such LCDFI and such executive officer(s) shall file with the commissioner a report containing the following information:

1. name and address of the executive officer;
2. title of the office to which the executive officer will be appointed;
3. a summary of the duties of the office to which the executive officer will be appointed;
4. Title of any office which the executive officer previously held with the LCDFI and title of any office (other than the office to which the executive officer was will be appointed) which the executive officer currently holds with the LCDFI;
5. The LCDFI shall provide a personal financial statement and confidential résumé on the form prescribed by the commissioner, containing the information called for therein, dated as of a date within 90 days before the filing of the report, and signed by the newly appointed executive officer.

C. Notification. Following approval by the Office, each LCDFI shall provide to the commissioner a written notice stating the effective date of the newly elected/appointed director, manager, or executive officer. Said notice must be received by the Office within 30 days of the stated effective date.

### **§1711. Income Tax Credits**

A. Pursuant to R.S. 51:3078(6), an investment for the purposes of earning income tax credits means a transaction that, in substance and in form, is the investment of cash in exchange for either:

1. Common stock, preferred stock, or an equivalent ownership interest in a LCDFI; or
2. A loan receivable or note receivable from a LCDFI which has a stated final maturity date of not less than five years from the origination date of the loan or note and is repaid in a manner which results in the loan or note being fully repaid or otherwise satisfied in equal amounts over the stated maturity of the loan or note.

B. In order to be eligible for any income tax credits, debentures, notes or any other quasi-equity/debt instruments shall have an original maturity date of not less than five years from the date of issuance. If an investment is in the form of stock, partnership interest, or any other equivalent ownership interest, such investment shall not be subject to redemption or repurchase within five years from the date of issuance. Except in the case where a LCDFI voluntarily decertifies and preserves all income tax credits, if debentures, notes or any other quasi-equity/debt instruments or stock, partnership interests, or other equivalent ownership interests are redeemed or repurchased within five years from issuance, any income tax credits previously taken, to the extent applicable to the investment redeemed or repurchased, shall be repaid to the Department of Revenue and Taxation at the time of redemption, and any remaining tax credits shall be forfeited, pursuant to R.S. 51:3082. Amortization of a note over its stated maturity does not constitute a redemption or repurchase under this Subpart.

1. No LCDFI certified after December first of any year shall be entitled to receive an allocation pursuant to R.S. 51:3079 for the same calendar year in which it was certified.

2. By December 10th, the commissioner shall review all requests for allocation of income tax credits and notify the LCDFI of the amount of certified capital for which income tax credits are allowed to the investors in such institution. During this 10 day review period, no investor substitutions will be allowed.

3. If a LCDFI does not receive an investment of certified capital equaling the amount of the allocation made pursuant to R.S. 51:3079 within 10 days of its receipt of notice of such allocation, that portion of the allocation will be forfeited and reallocated to the remaining LCDFIs on a pro rata basis.



C. Conditions to sell or transfer income tax credits:

1. The transfer or sale of income tax credits, pursuant to R.S. 51:3079(A), will be restricted to transfers or sales between affiliates and sophisticated investors, collectively referred to as acquirers. Furthermore, even though a transfer or sale of credits may involve several entities, only one election may be made during any calendar quarter. Therefore, an investor in a LCDFI may only transfer or sell credits once during a calendar quarter and the entity that purchases or acquires the credits may not transfer credits obtained during the calendar quarter of purchase. In any subsequent calendar quarter, the purchaser or acquirer of the credits may make one election per calendar quarter, if needed.

2. Companies and/or individuals shall submit to the Louisiana Department of Revenue and Taxation in writing, a notification of any transfer or sale of income tax credits at least 30 days prior to the transfer or sale of such credits. The notification shall include the original investor's income tax credit balance prior to transfer, the projected remaining balance after transfer, all tax identification numbers for both transferor and acquirer, the date of transfer, and the amount transferred.

3. If income tax credits are transferred between affiliates or sophisticated investors (acquirers), the notification submitted to the Department of Revenue and Taxation must include a worksheet, which the transferor and each acquirer shall also attach to their Louisiana corporate and/or individual income tax returns, which shall contain the following information for each corporation or individual involved:

- a. name of transferor and each acquirer;
- b. the gross Louisiana corporation or individual income tax liability of the transferor and each acquirer; and
- c. credits taken by the transferor and each acquiror under R.S. 51:3079(A) and (B).

4. The transfer or sale of income tax credits, pursuant to R.S. 51:3079(A), shall not affect the time schedule for taking such tax credits, as provided in R.S. 51:3079(A) and (C), respectively. Any income tax credits transferred or sold, which credits are subject to recapture pursuant to R.S. 51:3082, shall be the liability of the taxpayer that actually claimed the credit.

**§1712. Fees and Assessments**

Pursuant to the authority granted under LSA-R.S. 51:3082(A) and 3083(4), the following fee and assessment structure is hereby established to cover necessary costs associated with the administration of the Louisiana Community Development Financial Institution Act, LSA-R.S. 51:3075 et seq.

## A. Fees and Assessments

DESCRIPTION	FEE
1. Application for certification as a LCDFI.	\$2,000
2. Annual assessment fee of each LCDFI at a floating rate to be assessed no later than May 15th of each year, to be based on the total certified capital under management, as defined in LAC 10:XV.1702, as of the previous December 31st audited financial statements. Any amounts collected in excess of actual expenditures related to the administration of the Louisiana community development financial institution act by the Office of Financial Institutions shall be credited or refunded on a pro rata basis. Any shortages in assessments to cover actual operating expenses of OFI relating to the administration of the Louisiana community development financial institution act shall be added to the next variable assessment or billed on a pro rata basis.	Variable
3. Late fee for each calendar day that an assessment fee is late pursuant to the requirements of LAC 10:XV.1712(A)(2).	\$100 per day
4. Fee for request filed on December 1st of each year for certification of capital pursuant to LSA-R.S. 51:3079 in order obtain an allocation of certified capital.	\$1,000 Non-refundable
5. Fee for annual review of each LCDFI to determine the company's compliance with statutes and regulations.	\$50 per hour, per examiner, or \$500, whichever is greater.

## B. Administration

1. The failure to timely submit a fee with the request for allocation as required in §1712(A)(4) shall result in the denial of an allocation of certified capital.

2. The assessment described in §1712(A)(2) shall be considered timely if received by the office on or before May 31st of each calendar year. If the office receives an assessment after May 31st, it shall not be deemed late if it was postmarked on or before May 31st.

3. Unless annual audited financial statements are submitted to the office by April 30th, annual unaudited financial statements shall be submitted no later than May 1st. These unaudited financial statements shall then be used to determine the assessment amount provided for in §1712(A)(2). Accompanying these audited or unaudited financial statements shall be a detailed calculation of total certified capital under management as of December 31st.

4. If neither an audited nor unaudited financial statement has been received by this office by May 1st, the late fee described in §1712(A)(3) shall be assessed beginning on June 1st until the assessment has been paid in full.

5. If any of the dates prescribed in §1712(B)(2) and §1712(B)(3) with the exception of the April 30th and the December 31st due date for audited financial statements, occurs on an official state holiday, a Saturday, or a Sunday, the next business day for the Office of Financial Institutions shall be the applicable due date.

6. The assessment for each Louisiana Community Development Financial Institution, as defined in LSA-R.S. 51:3078(9), and described in §1712(A)(3) shall be based on the following formula:

a. The numerator will be the total certified capital under management of the LCDFI as of December 31<sup>st</sup> of the previous year;

b. The denominator will be the total certified capital under management for all Louisiana community development financial institutions as of the previous December 31st.

**C. Severability.**

If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation which can be given effect without the invalid provisions, items, or application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3075 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR

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John Ducrest, CPA  
Commissioner of Financial Institutions